

Hybrid Justice, Patriotism, and Democracy: A Selective Reply

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‘A hundred years before the expression took hold, Condorcet was an *intellectuel engagé*. His whole life was shared between thinking about principles and striving to turn them into reality.’² Over two hundred years after Condorcet’s death, this model is still worth emulating. Part of a political philosopher’s job, as I conceive of it, consists in elaborating and vindicating a coherent set of principles that firmly formulates an ideal worth fighting for. But another part, no less important, no less strenuous, is to make oneself available, as opportunities arise, to support and help shape attempts to move closer to this ideal, local and global, direct and indirect.

As I have now completed the first half century of my existence, I need to make sure — if I want to live up to this model — that my life does not end up having been much thinking and little striving, as perhaps my fascinating Brussels predecessor Joseph Charlier (whom I discovered thanks to the instructive contribution by John Cunliffe, Guido Erreygers, and Walter Van Trier)³ may have felt his had been. I must therefore allow the balance to gradually drift from one of these poles to the other. As compelling opportunities to do so have not been lacking, one unfortunate consequence is that I have been left with less time than I expected to perform various more abstract tasks, including giving a detailed reply to each of the exceptionally stimulating essays included in this collection. Some of what I would have said with more time available is contained in various replies already published in response to earlier criticisms,⁴ including by some of the contributors to this volume, and indeed in the reaction to Brian Barry by my old accomplice Robert van de Veen which is included in this volume.⁵ But some of what I would have liked to

¹ I am most grateful to Andrew Williams for several years of thoughtful feedback and stimulating discussions, from the 1996 conference at the University of Warwick, which sowed the first seeds of the present volume, to his careful and competent editorial comments on this ‘Reply’ over five years later.

² See Elisabeth Badinter and Robert Badinter, *Condorcet. Un intellectuel en politique* (Paris: Fayard, 1988), p. 60.

³ See Chapter 2, John Cunliffe, Guido Erreygers, and Walter Van Trier, ‘Basic Income: Pedigree and Problems’.

⁴ See the following: ‘Social Justice as Real Freedom for All. A Reply to Arneson, Fleurbaey, Melnyk and Selznick’, *The Good Society* 7, (1997), pp. 42-48; ‘Justice as the Fair Distribution of Freedom: Fetishism or Stoicism?’, M. Fleurbaey and J.F. Laslier (eds.), *The Ethics and Economics of Liberty* (London: Routledge, 1997), pp. 197-205; ‘Reciprocity and the Justification of an Unconditional Basic Income. Reply to Stuart White’, *Political Studies* 45, (1997), pp. 327-30; ‘Reply’, J. Cohen and J. Rogers (eds.) *What’s Wrong with a Free Lunch?* (Boston: Beacon Press, 2001); and, most extensively, ‘Real Freedom, the Market and the Family. Reply to Seven Critics.’, *Analyse und Kritik* 23, (2001), pp. 106-131.

⁵ See, respectively, Chapter 4, Brian Barry, ‘Real Freedom and Basic Income’, and Chapter 5, Robert van der Veen, ‘Real Freedom and Basic Income: Comment on Brian Barry’.

say in order to do full justice to the painstaking job of several of my critics will remain unsaid. This is the price to be paid for avoiding a further postponement of the completion of this reply, but it is one I much regret paying.

Consequently, I shall concentrate on two tasks. First, I shall restate what I regard as the fundamental contentions of *Real Freedom for All* in a way that, I hope, will eliminate a number of misunderstandings. In the course of doing so, I shall allow myself to refer to several recent articles in which various points are developed more fully. Next, I shall deal at some length with two important issues which occupy only a very marginal place in the book but constitute the main focus of two contributions to this volume: the scope of social justice and its relationship to democracy.

I. A Hybrid Conjecture in the Form of Three Principles

Real Freedom for All is an exercise in ‘reflective equilibrium’. It essentially consists in formulating and testing a conjecture about the content of social justice that aims to be consistent with my considered judgements and hopefully those of some of my readers. The challenge consists in working out a coherent set of principles that simultaneously captures, as simply and fully as possible, the importance we intuitively attach to freedom, equality, and efficiency, to empowering the weak, and to condemning free riding, as well as countless other firm convictions, from the quite general to the very specific.

The conjecture I make in *Real Freedom for All*, as the provisional outcome of this quest, can be rephrased as the ordered conjunction of three principles: (1) universal self-ownership, (2) undominated diversity of comprehensive endowments, and (3) sustainable maximin distribution of the value of external endowments. The first principle means that every member of the society considered owns her own body (and soul). The second principle requires that what is given to one person over her life time, whether as internal or external resources, should not be unanimously preferred to what is given to another. The third principle requires that the amount of external resources given to those who are given least of them should be as large as it can sustainably be, with resources measured by their opportunity costs, as approximated by their competitive market values. The fact that the three principles are ordered means that the first enjoys a soft priority over the second, and the second over the third. The softness means that a major improvement of the satisfaction of an inferior principle can justify a minor deterioration of the satisfaction of a superior principle.

It is worth emphasizing that I made no claim to deriving this ordered set of principles from some logically prior set of natural rights to human and non-human entities, or from some more

fundamental notion of equal or maximin real freedom (as Peter Vallentyne⁶ and Brian Barry,⁷ respectively, suggest that I do). The formula ‘real freedom for all’ is simply offered as a convenient compact summary for the combination of the three principles. It has been chosen because it highlights the claim that distributive justice is a matter of distributing possibilities, or freedom, rather than results, and that one should focus upon the *real* opportunities available to *each* individual. But what constitutes a fair distribution of these real possibilities is not captured by some prior notion of equal real freedom. It is given by the conjunction of the three principles, whose validity is a matter of joint optimal fit with one’s considered judgements.

Real Freedom for All does not make much of an effort to elaborate the condition of self-ownership and the priority rules. Its main focus is on the specification of what it means to distribute real possibilities in maximin fashion. As such, it aims to improve upon the specifications of the same fundamental idea that are to be found, in sketches or in full, in the works of Rawls, Sen, Dworkin, Rakowski, Arneson, G.A. Cohen and others. What it proposes can be viewed as a hybrid combination of undominated diversity and value equalisation. Opting for this hybrid has the odd consequence of justifying an unconditional basic income for all, whereas each of the two ideas it combines, if allowed to cover indiscriminately both the external and internal component of one’s endowment, would justify no more than a transfer system targeted to the comparatively less talented — stingy if undominated diversity of comprehensive endowments were all that mattered, massive if the maximin distribution of the value of what one is given applied to one’s talents as well as to one’s external resources.

II. Undominated Diversity, and Why It Is Not Enough

Doubtless it is possible to improve upon my conjecture regarding the best way of capturing my own considered judgements, quite possibly along the lines adumbrated by some of the contributions to this volume. But prospective improvers should be aware of what led me to make my specific proposal. Perhaps a helpful way of rephrasing that underlying motivation is as follows.

In a pluralist society, people reasonably disagree about what matters in life, and hence about which abilities it is most important to have. Full acknowledgement of this situation does not make it impossible to judge that person *A* is less well equipped than person *B* and is therefore entitled to a transfer from *B*. But it would make it odd to decree that *A* is entitled to a transfer from *B* despite the fact that both *A* and *B* find, in the light of their respective conceptions of the good life, that *A* is better equipped than *B*. And it would also be odd to decree, in the name of equality, that *A* is entitled to a transfer from *B*, while *C* is not entitled to a transfer from *D*, in a

⁶⁶See Chapter 3, Peter Vallentyne, ‘Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin’.

⁷ See ‘Real Freedom and Basic Income’.

case in which *A* and *C*, and *B* and *D*, respectively, are identically endowed. Reducing the requirement of justice to the elimination of all cases of universal preference of one endowment struck me as the only way of ruling out simultaneously these two possibilities.

It is worth emphasizing that the motivation for undominated diversity, thus restated, is not — as, judging from Andrew Williams’s comment,⁸ I must have suggested — that undominated diversity can be understood as potential envy-freeness, in the sense that, compared to the endowment of every other person, each person would prefer her own endowment if she used as a standard a conception of the good actually adopted by at least one member in society. The ‘availability’ of envy-freeness in this sense is an interesting way of reformulating undominated diversity. But the fundamental motivation behind it has nothing to do with the elimination of envy: it is simply the respect for a diverse set of conceptions of the good life.

Note, too, that once preferences are trimmed so as to eliminate ill-informed or incoherent ones, the gap between this criterion and one based on a conception of the good which is, as is Arneson’s for example,⁹ fairly plural, and which is therefore associated with an ordering of endowments that is only partial, is not that wide. Nonetheless, as our societies become more pluralistic, or as the level at which issues of fair distribution arise starts encompassing more diverse societies, undominated diversity might become so easy to satisfy that very little redistribution will be justified in this way. This implication would seem particularly unwelcome as growing pluralism is going hand in hand with expanding inequalities, themselves the joint outcome of technological change and globalisation.

The reason why undominated diversity is of little help as a basis for addressing these inequalities is not only that in pluralist societies, in which some people might give little importance to earning power, great income inequalities are consistent with the absence of dominance. In addition, and more fundamentally, in our increasingly complex knowledge- and communication-based economy earning power cannot be identified, as it is in elementary microeconomics, as a feature of an agent’s endowment: how much a person, with given talents, will manage to earn is heavily dependent on what productive slots her connections, her training, her citizenship, her place of residence, her mother tongue, the fluctuations of her temper, and sheer luck will enable her to occupy, and on how well she fits in, in that slot, with co-workers, bosses, and clients as well as local culture and technology. Consequently, it is wrong to imagine that one could address the growing inequality of earning power by identifying and correcting inequalities in people’s internal endowments.

⁸ See Chapter 7, Andrew Williams, ‘Resource Egalitarianism and the Limits to Basic Income’.

⁹ See Chapter 6, Richard Arneson, ‘Should Surfers Be Fed?: A Critique of Resourcist Justice’.

III. The Maximin Distribution of the Value of External Endowments

A far more promising option arises if one retains undominated diversity as a weak background constraint, while asking how a fair distribution of external endowments should be characterised in the sort of environment I have just sketched. Even those who feel most uncomfortable with the idea of an unconditional income, such as Stuart White¹⁰ or Elizabeth Anderson,¹¹ are willing to admit the legitimacy of a dividend scheme of the Alaskan type. If there is a jointly owned natural endowment, such as oil, instead of giving each member of the society concerned an equal and untradable volume of oil, it makes far more sense to give everyone a cash equivalent.

It is important to note that what this cash equivalent gives people actual access to will vary from one person to another, depending on each person's conception of the good life. How much a person will manage to get of what she wants will be affected by the preferences of others, because equal cash means, in the absence of discrimination, access to equal market value, itself the outcome of the interaction between the supply of factors of production and the tastes that underlie consumer demand. This interaction determines how precious external resources are at a particular time, as reflected, at least roughly, by the price they command in a properly functioning market. Equality of cash endowments therefore means external endowments that are equally precious, equally valuable, in terms of how much others would like to have them. It is this intuitive notion that guides the choice of a competitive price metric to articulate my third principle, rather than —as, judging again from Andrew William's remarks,¹² I must have suggested — any connection there might be, under some conditions, between competitive equilibrium and the achievement of envy-freeness.

According to the criterion of value equalisation, just as with undominated diversity, each individual's eventual entitlements depend on everyone else's preferences. But the nature of this dependence is very different in the two cases. In particular, as regards the implications of value equalisation there is no reason to expect that growing pluralism will lead to less redistribution. On the other hand, it must be conceded that there is something more institutionally contingent about the plausibility of value equalisation. The fairness of giving everyone the same cash equivalent is conditioned by the non-discriminatory nature of the market in which this cash is to be spent. If some goods or services can be bought, some flats rented, some jobs filled, only by

¹⁰ See Chapter 8, Stuart White, 'Fair Reciprocity and Basic Income'.

¹¹ See Elizabeth Anderson, 'Optional Freedoms', J. Cohen and J. Rogers (eds.), *What's Wrong with a Free Lunch?* (Boston: Beacon Press, 2001), pp. 70-74.

¹² See Chapter 7.

people of a particular race or gender, the notion that cash distribution provides an appropriate way of achieving a fair distribution of external resources loses a great deal of its appeal.¹³

The key step in *Real Freedom for All*, however, involves lending considerable muscle to the principle of value equalisation by incorporating jobs amongst the resources to which it applies. This massive extension of the scope of the principle is the positive side of the insight that feeds deep scepticism as to undominated diversity's capacity to handle the challenge of capturing the injustice of mounting inequalities. What determines people's earning power and actual income, is not only their endowment in skills and in material wealth, as in elementary textbooks, but no less a complex set of opportunities, some structured, some unstructured, which enable people to tap — very unequally — society's tremendous income-generating power. Of course, to tap this source of material benefit, some work usually needs to be done, just as in order to inherit from one's old aunt it may have helped to pay her a few visits. By no means does this invalidate the fact that most of what the 'tappers' receive must be viewed as a gift — as should be clear when comparing the yield of paying the same number of visits to a rich aunt and to a poor one, or the payoff of a given physical and mental effort in Manhattan and in Peshawar. In the language adopted by Peter Vallentyne, effort and option luck operate on the background of very unequally distributed brute luck.¹⁴

Accommodating this insight massively expands the legitimate base for Alaska-type redistribution, far beyond natural resources and the transfer of wealth through donation and inheritance. *Real Freedom for All* does not defend the *equalisation* of the value of this enlarged base, but only its sustainable *maximinisation*. This can be operationalised, *Real Freedom for All* argues step by step, by maximising the yield of efficient, comprehensive and predictable income taxation, and distributing this yield equally to all, irrespective of their earnings. Like Rawls's difference principle, this may appear to be some outcome-equalising programme, but is not.¹⁵ Instead, it formulates an opportunity-egalitarian approach that means business in a sophisticated and messy world, in which opportunities cannot be neatly measured as the value of a person's raw 'human capital' but are the product of an untraceable interaction between innate talents, education trajectory, family connections, lucky hirings, smooth complementarities, etc.

With this comprehensive gift-maximisation principle firmly in place, undominated diversity can still play a modest limiting role in the background, but the risk that neutrality might make equality shrink into insignificance, very serious if we had nothing but undominated diversity to fall back on, has now been effectively defeated. No need to rely on any particular conception of the good — neither pro-market, nor anti-market, for example — in order to justify the maximin

¹³ For further discussion, see 'Real Freedom, the Market and the Family. Reply to Seven Critics'.

¹⁴ The underlying intuition is well expressed by Herbert Simon in 'UBI and the Flat Tax', in J. Cohen and J. Rogers (eds.), *What's Wrong with a Free Lunch?* (Boston: Beacon Press, 2001), pp. 34-38.

¹⁵ For an explanation of the difference principle, see Philippe Van Parijs, 'Difference Principles', Samuel Freeman (ed.), *The Cambridge Companion to John Rawls*, (Cambridge: Cambridge University Press, 2002).

distribution of the market value of external endowments in a broad sense that encompasses employment and other market rents.

IV. The Proper Place of Solidarity

Unlike undominated diversity, this maximin principle cannot be said to give some interpretation to a notion of reciprocity or solidarity, at least as most intuitively understood. Like several of my critics,¹⁶ I am sensitive to the idea that free riding is ethically wrong.¹⁷ Yet, I am unimpressed by the critique that the unconditional basic income justified by my maximin principle is a form of free riding, or indeed, in Gijs van Donselaar's version of the critique, a form of parasitism.¹⁸ Let me briefly explain.

It is bad enough to be a free rider, i.e. to benefit from a good while leaving others bear the full cost of its production. But it is even worse to be a parasite, i.e. to benefit from the good while thereby increasing the cost borne by those who produce it. Unlike those whose work benefits mere free riders, those whose work benefits parasites would be materially better off if the beneficiaries did not exist. And this is the case, van Donselaar says, for those who get their basic income without doing any work towards it.

I am not impressed by this critique because what turns the basic income consumer into a parasite is simply the fact that she takes her fair share of what is there for everyone to share. If there is something to be shared among any given number of people, it is self-evident that if one of these did not exist there would be more for the others. Now, as mentioned earlier, those of my critics who are most sensitive to solidarity concerns concede that in the case of the proceeds of Alaskan oil, for example, equal sharing irrespective of people's contribution, or willingness to contribute, makes ethical sense. And they have provided no decisive ethical reason for establishing a discontinuity between the fair sharing of the value of natural resources and the fair sharing of the value of other external resources to which we are given very unequal access, in particular the rents incorporated in our jobs. For example, the value of natural resources is determined by the use others have made, make, and will make of them. A ton of oil would be just as worthless as a job would be if there were not, or had not been, other people to invent techniques, produce, and consume. And it is, of course, the object's having a value, rather than its sheer existence, that provides a potential for cash redistribution.¹⁹

¹⁶ See, in this volume, Stuart White, 'Fair Reciprocity and Basic Income', and also Elizabeth Anderson, 'Optional Freedoms', and William Galston, 'What about Reciprocity?', both in J. Cohen and J. Rogers (eds.), *What's Wrong with a Free Lunch?* (Boston: Beacon Press, 2001).

¹⁷ See 'Justice and Democracy: Are they Incompatible?', and 'Linguistic Justice'.

¹⁸ See Gijs Van Donselaar, *The Benefit of Another's Pain. Parasitism, Scarcity, Basic Income* (University of Amsterdam, Ph. D. Thesis in Philosophy, 1997).

¹⁹ See Philippe Van Parijs, 'Reciprocity and the Justification of an Unconditional Basic Income. Reply to Stuart White', *Political Studies* 45, (1997), pp. 327-30, responding to Stuart White,

Or take the following suggestion as to where the discontinuity may lie. It is no doubt true that some jobs, even if fully available, would be declined by certain individuals. It is even conceivable that some people may turn down all existing jobs. But this cannot be a reason for considering that the value of jobs, in the sense of the employment rents associated with them, is not fit for distribution to the voluntarily unemployed. If an individual lacks what van Donselaar terms an ‘independent interest’ in some natural resource, such as a plot of land, and thus attaches no value to it other than as an item to exchange in return for compensation from others, is this a compelling ground to exclude her from any share in its value? Surely those of us who covet everything are not entitled, as a matter of justice, to a greater share of the value of a collective inheritance than those whose ‘independent interests’ are less extensive. It seems far more sensible to take land values as generated by the interaction of the more or less focused desires of all, and to distribute its aggregate value equally to all. And if job rents are added to the stock of resources spontaneously distributed in very unequal fashion, there is similarly no reason to restrict their fair redistribution to those who have an ‘independent’ interest in them. The modest income afforded to the voluntary unemployment by the taxation of employment rents is therefore no more — and no less, in a sense to be discussed very shortly in connection with global justice — stolen income than that derived from natural rents. What justifies either is not solidarity but fairness. Fairness is not a substitute for solidarity. But it must be shape the ‘basic structure’ against the background of which co-operative ventures governed by reciprocity and solidarity can meaningfully operate.

A legitimate concern for reciprocity and solidarity in a wide variety of contexts should therefore not inhibit our efforts to empower the more powerless by providing everyone a modest unconditional, individual, and universal income. In most places, many steps are still needed to get there, and many compromises, different in different places, will need to be struck. One will need sometimes to settle for less than subsistence, sometimes for the household rather than the person as the relevant unit, sometimes for some sort of participation or willingness to work as a strict condition, very often for some sort of means test, and occasionally, perhaps, for everything at once. Never mind. This is not an all-or-nothing affair. Progress, however modest, is worth welcoming and supporting. But to determine whether a reform constitutes progress, and how significant, it helps to be clear about the direction in which concern for a fair distribution of what we are given should take us. For clarity and coherence about the destination will enable us to confront unabashed the arrogance and hypocrisy of the privileged. They will also help us counter the oppressive instinct of those control freaks who dream of an ‘active social state’ that will bend the weakest to their will by compelling them to do what they themselves would never dream of doing. From step to step, in many variants and through countless detours, we must instead build an emancipatory ‘active social state’.

Even those most concerned to make benefit claimants professionally active may see the point of a system that integrates into a single universal basic payment the bottom part of the welfare state

‘Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income’, *Political*

benefits and the fast expanding patchwork of refundable tax credits, and other advantages restricted to earners. Such a floor is not a substitute for more restrictive provisions based on solidarity, insurance, or direct reciprocity. It is rather a condition for their fair and efficient operation.

V. Patriotism in the Service of Global Justice?

After this global reaction to the pieces that address the central themes of *Real Freedom for All*, I turn to a more focussed response to the two pieces that address important issues that it hardly touched at all.

Hillel Steiner endorses the cosmopolitan view of social justice sketched in the final section of *Real Freedom for All*, and hence the appropriateness of ‘scale lifting’ from the national to the global level as the first-best strategy to bring about whatever redistribution justice requires.²⁰ But he does not think much of the second-best strategy I felt I had to offer because of my conviction that vigorous scale lifting would take too long.

Steiner does agree that ‘it will take a long time to create political entities of the right sort at the right level, to equip them with appropriate democratic institutions and to build both the political will and the concrete instruments without which substantial inter-national redistribution will remain a utopia.’²¹ The alternative instrument I proposed was to build up and use ‘solidaristic patriotism’, characterised by Steiner as a ‘strong emotional commitment to the wellbeing of one’s compatriots simply because they are one’s compatriots’. But such patriotism, Steiner claims, would not make things better but worse, as regards the transnational leximin which justice requires. It amounts to greater justice among thieves at the cost of greater theft.

The core of Steiner’s argument is straightforward. Suppose redistribution is not or only very partly globalised, and that against this background each sovereign country endeavours to maximise its own basic income, in all likelihood much higher in richer countries than in poorer ones. Steiner and I agree that this is worse, in terms of worldwide maximin, than a basic income administered and maximised on a global scale. But whereas I claim that solidaristic patriotism would improve things using this standard, Steiner believes that it would worsen them. ‘Compatriot priority is not a serviceable vehicle for reaching the goal of global distributive justice’. Why not?

Firstly, it would inhibit the movement of capital, physical and human, from richer to poorer countries, and would thereby make the highest sustainable basic income higher in the richer countries, and lower in the poorer countries, than would otherwise be the case. Greater justice in

Studies 45, (1997), pp. 312-26.

²⁰ See Chapter 9, Hillel Steiner, ‘Compatriot Priority and Justice Among Thieves’ [insert page number].

²¹ See *Real Freedom for All*, p. 230.

some place perhaps, but only among thieves, among people who enjoy a national basic income higher than the (weighted) world average, and hence higher than what the basic income would be if it were organised, as first-best justice would require, on a world scale. Justice will not be fostered, but hindered, as a result of Marks and Spencer's patriotic owners choosing to invest in Macclesfield rather than in Marrakech.

This first case against 'compatriot priority' is afflicted by two crucial weaknesses. Firstly, it is by no means 'trivially true that a global practice of national asset retention would work to the benefit of asset-rich countries and to the disbenefit of asset-poor ones'. When the United States keeps for good half the post-docs it attracts, this contributes to a flow of human capital from asset-poorer to an asset-richer country. Had 'compatriot priority' been stronger, relative to the attraction of a better pay or a more stimulating working environment, this further impoverishment of the asset-poor countries would have been prevented. True, the net flow could still be positive, as profit-seeking investments find their way to a less productive but also less demanding labour force. However, in a world in which technical and organisational talent is ever more crucial to a country's economic success, the creaming off of the world's human capital may amount to a plundering of the asset-poor countries by the asset-rich of a magnitude which dwarves the earlier plundering of their natural resources.²² That the absence of a global practice of national asset retention works to the benefit of asset-poor countries and to the disadvantage of asset-rich ones is, therefore, not 'trivially true' at all. It may prove disastrously false.

Moreover, even if it happened to be true, even if a global practice of national asset retention worked to the disadvantage of asset-poor countries, it would by no means follow that it would depress the highest sustainable level of basic income achievable in these countries. My key claim in favour of solidaristic patriotism is that, in its absence, asset-rich assets present a far more credible threat, not only to move from Macclesfield to Marrakech, but also from Macclesfield to Madison, or from Marrakech to Madras, and back, depending on how favourable a deal they are offered. In this context, even if some asset-poor country would be a net asset gainer in case of asset-migration uncluttered by patriotic concerns, the lack of such concerns would by the same token weaken the country's grip on the income from these assets, and hence its ability to fund, among other things a basic income. The central purpose of solidaristic patriotism is not to reduce inequalities between countries. Even if it increases such inequalities, it is fully justified in terms of a (second-best) world maximin if it enables countries, especially, but not only, the asset-poorest, to sustainably tax to the benefit of its asset-poorest individual members more than it otherwise could. By overlooking this dynamic dimension, and hence the key distinction between a

²² An increasingly important dimension of this plundering will be linguistic. As English spreads as a world lingua franca, the value of having English as the country's mother tongue increases, and the value of having another language shrinks. There follows an unprecedented specific pressure for human capital to move from countries made asset-poorer by this process to countries made asset-richer by it. For further discussion, see P. Van Parijs, 'Linguistic Justice', *Politics, Philosophy, and Economics* 1, (2002).

country's wealth and its basic-income-potential, Steiner's first reason for indicting solidaristic patriotism misses the core of my (admittedly elliptic) argument for it.

Steiner's second reason for indicting solidaristic patriotism is that the latter might operate at the level of peoples that correspond to only a subset of a country's whole population, in particular to a comparatively rich subset. Whenever this is the case — Steiner mentions a significant number of plausible recent illustrations, including Belgium — solidaristic patriotism promotes a different way in which the asset-rich can escape high redistribution: not by individually exporting their assets but by collectively 'exporting their countries', i.e. by seceding. Even though I am sympathetic to major increases in the political autonomy of territorially distinct linguistic communities, I completely agree with Steiner that full secession would generally be a bad thing in terms of a worldwide leximin. This is so in part for the static reason he has in mind — the termination of net transfers from richer to poorer regions — but, above all, again for the dynamic reason that secession would sharpen international fiscal and social competition as a result of nations becoming smaller and more numerous, and would thereby weaken each nation's redistributive grip. I am therefore strongly opposed, not only to economically motivated secession, but to any significant decentralisation of redistributive powers.²³

How is this to be reconciled with my plea for solidaristic patriotism? Quite easily, I think, if one heeds the motivation I give for the latter in *Real Freedom for All*: 'The competitive pressure against existing intra-national redistribution is mounting, and it would, therefore, be good if there were another strategy which would enable us to keep and regain at least part of the required leeway' (p. 230). The choice of the locus of desirable solidaristic patriotism is not left to the vagaries of spontaneous popular sentiment. It must be nurtured in those places, and only in those places, in which it helps to protect an existing or emerging redistributive patria. This is not to deny that viable redistribution needs to be structured differently in a federation of regions with significant political autonomy and in a strong unitary state. Nor is it to deny that strong patriotism at one level may hamper efforts to lift redistribution to a higher level. But it should be clear that my advocacy of closely targeted solidaristic patriotism is a long way from a general endorsement of any nationalistic demand. More than making sense of justice among thieves, this would have amounted to fostering theft.

²³ This is not a merely theoretical position, but is reflected in my personal involvement in Belgium's public debate. See, for example, Gérard Roland, Toon Vandeveld, and Philippe Van Parijs, 'Repenser (radicalement ?) la solidarité entre les régions', F. Docquier (ed.), *La Solidarité entre les régions. Bilan et perspectives* (Bruxelles : Deboeck Université, 1999), and Philippe Van Parijs, 'Philosophie de la fiscalité pour une économie mondialisée', *Bulletin de documentation du Ministère des finances* 60. 2, (2000), pp. 25-48.

VI. Democracy, a Mere Instrument?

The second important issue hardly considered in *Real Freedom for All* but central to one of the pieces in this volume is the relationship between justice and democracy.²⁴ Thomas Christiano takes issue with the uncompromisingly instrumental approach to democracy which I only hinted at in the book (e.g. pp. 19, 224, 229, and 231), but developed more fully and illustrated at length in several subsequent essays.²⁵ He is particularly inflamed by the fact that, at the beginning of ‘The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice’, I dare to consider — even though I unambiguously reject — the suggestion that the elderly should be stripped of their voting rights, or have the weight of their votes reduced, in order to prevent an ageing electorate from adopting policies that would be unfair to the young and the unborn.

Christiano does not deny that outcomes are relevant to assess collective-decision procedures. On the contrary, he persuasively argues that a purely procedural justification of democracy — roughly defined as a collective decision-making procedure that rests on political equality — would be either arbitrary or incoherent. He defends instead a *dualist* justification of democracy, which appeals not only to democracy’s instrumental value in promoting just outcomes but also to the intrinsic justice of its procedures. His essay, however, leaves open both the precise characterisation of just outcomes and the way to resolve conflicts that arise when the two standards diverge, as he admits may happen.

How significant is the disagreement between us? I do I agree with Christiano that democracy is a ‘generally necessary condition’ for the realisation of justice. Moreover, the reason why I believe this to be the case is that democratic procedures show, or purport to show, equal consideration for the interests and conceptions of all citizens, which is precisely the feature of democracy which makes it (generally?) intrinsically just according to Christiano. But while I am willing to affirm that democracy — not only in the ‘broad conception’ of political equality for all citizens, but also

²⁴ See Chapter 10, Thomas Christiano, ‘Is Democracy Merely a Means to Social Justice?’

²⁵ See Philippe Van Parijs, ‘Justice and Democracy: Are they Incompatible?’, *Journal of Political Philosophy* 4, (1996), pp. 101-117, Philippe Van Parijs, ‘Reciprocity and the Justification of an Unconditional Basic Income. Reply to Stuart White’, *Political Studies* 45, (1997), pp. 327-30, Philippe Van Parijs, ‘The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice’, *Philosophy and Public Affairs* 27, (1998), pp. 292-333, Philippe Van Parijs, ‘Contestatory Democracy versus Real Freedom for All’, Ian Shapiro and Casiano Hacker-Gordon (eds.), *Democracy's Value* (Cambridge: Cambridge University Press, 1999), pp. 191-198, and Philippe Van Parijs, ‘Power-Sharing versus Border-Crossing in Ethnically Divided Societies’, Steven Macedo and Ian Shapiro (eds.), *Nomos XLII. Designing Democratic Institutions*, (New York: NYU Press), pp. 296-320. According to Christiano, I do not stick to this systematic instrumentalism, because of the priority I ascribe to self-ownership in my conception of social justice. But what follows from that conception, in this respect, is not merely the inscription of the key components of the protection of self-ownership in the constitution, but a consequentialist evaluation of a society’s institutions - including political institutions, such as the rules that determine how the police is organized, funded, and controlled - in terms of their impact on the effective protection of the self-ownership rights of all categories of citizens (against the state, and above all against each other).

in Christiano's 'narrow conception' of political equality at all ages — is intrinsically well suited to produce just outcomes, I find it unnecessary, and indeed confusing, to infer that democracy is intrinsically just, and hence to swap my pure 'fixed end instrumentalism', as Christiano calls it, for his hybrid alternative.

This is not just academic knit-picking, and Christiano's challenge is therefore not otiose, for the following two reasons. First, a process which gives perfectly equal consideration to the interests and conceptions of all citizens may display a propensity to take decisions that are highly, and unjustly, detrimental to the interests of non-citizens — foreigners, children and the unborn. I cannot see why the fact that true democracy is a good tool to fight the unjust privileges of those, among (contemporary adult) citizens, who are despots or the rich should make us decree that it is intrinsically just, when it is unfit to fight unjust privileges relative to non-citizens. Hence there is nothing self-contradictory, or outrageous, about exploring deviations from democracy that may achieve greater justice towards non-citizens. Indeed, those really committed to justice would be foolish not to explore such deviations, however cautious they should be about, as I certainly was, about decreeing any of them worth trying.²⁶

Secondly, and far more importantly for practical purposes, the notion of the intrinsic justice of democracy induces a strong presumption that 'more democratic' systems are intrinsically more just, and hence more desirable, than less democratic ones. What prompted me to think more systematically about democracy is precisely the realisation, starting with the Indian example discussed in 'Justice and Democracy: Are they Incompatible?', that more democracy – the strict implementation, for example, of universal eligibility – can be badly counterproductive in terms of civil peace and social justice. On the contrary, the 'Machiavellian' programme of investigating, in ruthlessly consequentialist fashion, the likely consequences of various more or less democratic institutional designs for the sustainable achievement of social justice,²⁷ is not only intellectually more exciting, but of great and urgent relevance if one is to avoid making irreversible blunders by naively extrapolating from the working of democratic one-nation-states such as France or the United States to the needs of plurinational countries or supra-national polities.²⁸

²⁶ See 'The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice'.

²⁷ Christiano repeatedly characterizes my interpretation of the 'Machiavellian' approach as resting on the view that citizens and political agents 'are deeply self-interested'. This is a misunderstanding: 'The 'Machiavelli' component, on the other hand, refers to an approach to political institutions which aims to shape them in such a way that those acting within them will end up generating the 'right' collective outcome, even though they *may* be moved by little else than their own *private* concerns.'; 'People need to be taken as they are or can feasibly be made to be, not as elementary economic textbooks posit they are. There is no need to assume that voters are strictly selfish...' See 'The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice', pp. 299, emphasis added, and 322 respectively.

²⁸ See Philippe Van Parijs, 'Should the European Union Become More Democratic?', A. Follesdal and P. Koslowski (eds.), *Democracy and the European Union*, (Berlin & New York: Springer, 1997), pp. 287-301, 'Power-Sharing versus Border-Crossing in Ethnically Divided Societies', and 'Must Europe Be Belgian? On Democratic Citizenship in Multilingual Polities'.

Of course, all this presupposes a commitment to a specific conception of justice, and Christiano repeatedly points out that there is considerable disagreement about this. Political philosophers and the institutional engineers they might inspire are fortunately not in a position, in ‘zookeeping’ fashion, to despotically impose their personal conception of justice and the corresponding institutions. A democratic majority must decide. But this must not stop political philosophers from telling the majority what it should decide and why, including as regards institutions that will modify its own functioning and lead it to take decisions different from what it otherwise would. As I have tried to explain in connection with intergenerational justice,²⁹ this task is not self-contradictory, or possible only when it is not useful. But for it to make sense, the conception of justice to which it appeals must be defensible by arguments that embody an equal respect for each citizen’s conception of the good life and an equal concern for their interests. This I claim is the case with social justice as ‘real freedom for all’. No reason, therefore, to shy away from pushing for bold justice-inspired institutional reforms. Condorcet, I bet, would not disagree.

²⁹ See ‘The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice’.